

JS 44
SDNY
REV 12/2005

GEORGE McMAHON

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided in local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS ANTHONY SPINALE

DEFENDANTS LINDSAY MITCHELL and DANIEL FAVALE

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Linda Strumpf, Esq., Lauren E. Moss, of Counsel, 2 West Road, South Salem, NY 10590, 212-566-6800

ATTORNEYS (IF KNOWN)

Carolina A. Fornos, AUSA, United States Attorney's Office, SDNY, 86 Chambers Street, NY, NY 10007, 212-637-2740

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Defamation and Denial of Inspection Services against Inspectors of the United States Department of Agriculture

Has this or a similar case been previously filed in SDNY at any time? No Yes? Judge Previously AssignedIf yes, was this case Vol Invol. Dismissed. No Yes If yes, give date _____

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

ACTIONS UNDER STATUTES

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATES
	PERSONAL INJURY	PERSONAL INJURY		
<input type="checkbox"/> 110 INSURANCE	<input type="checkbox"/> 310 AIRPLANE	<input type="checkbox"/> 362 PERSONAL INJURY - MED MALPRACTICE	<input type="checkbox"/> 610 AGRICULTURE	<input type="checkbox"/> 400 STATE REAPPORTIONMENT
<input type="checkbox"/> 120 MARINE	<input type="checkbox"/> 315 AIRPLANE PRODUCT LIABILITY	<input type="checkbox"/> 365 PERSONAL INJURY PRODUCT LIABILITY	<input type="checkbox"/> 620 FOOD & DRUG	<input type="checkbox"/> 410 ANTITRUST
<input type="checkbox"/> 130 MILLER ACT	<input type="checkbox"/> 320 ASSAULT, LIBEL & SLANDER	<input type="checkbox"/> 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY	<input type="checkbox"/> 625 DRUG RELATED SEIZURE OF PROPERTY	<input type="checkbox"/> 430 BANKS & BANKING
<input type="checkbox"/> 140 NEGOTIABLE INSTRUMENT	<input type="checkbox"/> 330 FEDERAL EMPLOYERS' LIABILITY	<input type="checkbox"/> 630 LIQUOR LAWS	<input type="checkbox"/> 628 WITHDRAWAL	<input type="checkbox"/> 450 COMMERCE/ICC RATES/ETC
<input type="checkbox"/> 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	<input type="checkbox"/> 340 MARINE LIABILITY	<input type="checkbox"/> 640 RR & TRUCK LIABILITY	<input type="checkbox"/> 21 USC 881	<input type="checkbox"/> 460 DEPORTATION
<input type="checkbox"/> 151 MEDICARE ACT	<input type="checkbox"/> 345 MARINE PRODUCT LIABILITY	<input type="checkbox"/> 650 AIRLINE REGS	<input type="checkbox"/> 640 TRADEMARK	<input type="checkbox"/> 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
<input type="checkbox"/> 152 RECOVERY OF DEFULTED STUDENT LOANS (EXCL VETERANS)	<input type="checkbox"/> 350 MOTOR VEHICLE	<input type="checkbox"/> 660 OCCUPATIONAL SAFETY/HEALTH	<input type="checkbox"/> 680 COPYRIGHTS	<input type="checkbox"/> 480 CONSUMER CREDIT
<input type="checkbox"/> 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS	<input type="checkbox"/> 355 MOTOR VEHICLE PRODUCT LIABILITY	<input type="checkbox"/> 690 OTHER	<input type="checkbox"/> 680 PATENT	<input type="checkbox"/> 490 CABLE/SATELLITE TV
<input type="checkbox"/> 160 STOCKHOLDERS SUITS	<input type="checkbox"/> 360 OTHER PERSONAL INJURY	<input type="checkbox"/> 385 PROPERTY DAMAGE PRODUCT LIABILITY	<input type="checkbox"/> 680 TRADEMARK	<input type="checkbox"/> 810 SELECTIVE SERVICE
<input type="checkbox"/> 190 OTHER CONTRACT			<input type="checkbox"/> 820 SOCIAL SECURITY	<input type="checkbox"/> 850 SECURITIES/ COMMODITIES/ EXCHANGE
<input type="checkbox"/> 195 CONTRACT PRODUCT LIABILITY			<input type="checkbox"/> 861 MIA (1395FF)	<input type="checkbox"/> 875 CUSTOMER CHALLENGE
<input type="checkbox"/> 196 FRANCHISE			<input type="checkbox"/> 862 BLACK LUNG (923)	<input type="checkbox"/> 881 AGRICULTURE ACTS
	ACTIONS UNDER STATUTES		<input type="checkbox"/> 863 DIWC (405(g))	<input type="checkbox"/> 882 ECONOMIC STABILIZATION ACT
	REAL PROPERTY	CIVIL RIGHTS	<input type="checkbox"/> 864 SSID TITLE XVI	<input type="checkbox"/> 883 ENVIRONMENTAL MATTERS
		PRISONER PETITIONS	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 884 ENERGY ALLOCATION ACT
			<input type="checkbox"/> 710 FAIR LABOR STANDARDS ACT	<input type="checkbox"/> 885 FREEDOM OF INFORMATION ACT
<input type="checkbox"/> 210 LAND CONDEMNATION	<input type="checkbox"/> 441 VOTING	<input type="checkbox"/> 720 LABOR/MGMT RELATIONS	<input type="checkbox"/> 740 RAILWAY LABOR ACT	<input type="checkbox"/> 900 APPEAL OF FEE DETERMINATION
<input type="checkbox"/> 220 FORECLOSURE	<input type="checkbox"/> 442 EMPLOYMENT	<input type="checkbox"/> 730 LABOR/MGMT REPORTING & DISCLOSURE ACT	<input type="checkbox"/> 790 OTHER LABOR LITIGATION	<input type="checkbox"/> 900 DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
<input type="checkbox"/> 230 RENT LEASE & EJECTMENT	<input type="checkbox"/> 443 HOUSING ACCOMMODATIONS	<input type="checkbox"/> 791 EMPL RET INC SECURITY ACT	<input type="checkbox"/> 870 TAXES	<input type="checkbox"/> 950 CONSTITUTIONALITY OF STATE STATUTES
<input type="checkbox"/> 240 TORTS TO LAND	<input type="checkbox"/> 444 WELFARE	<input type="checkbox"/> 530 HABEAS CORPUS	<input type="checkbox"/> 871 IRS-THIRD PARTY	<input type="checkbox"/> 890 OTHER STATUTORY ACTIONS
<input type="checkbox"/> 246 TORT PRODUCT LIABILITY	<input type="checkbox"/> 445 AMERICANS WITH DISABILITIES - EMPLOYMENT	<input type="checkbox"/> 535 DEATH PENALTY	<input type="checkbox"/> 20 USC 7609	
<input type="checkbox"/> 290 ALL OTHER REAL PROPERTY	<input type="checkbox"/> 446 AMERICANS WITH DISABILITIES - OTHER	<input type="checkbox"/> 540 MANDAMUS & OTHER		
		<input type="checkbox"/> 550 CIVIL RIGHTS		
		<input type="checkbox"/> 555 PRISON CONDITION		

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.?
IF SO, STATE:

DEMAND \$ _____ OTHER _____ JUDGE _____ DOCKET NUMBER _____

Check YES only if demanded in complaint
JURY DEMAND: YES NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN **x** IN ONE BOX ONLY)**ORIGIN** 1 Original Proceeding 2a. Removed from 3 Remanded from 4 Reinstated or Reopened

State Court

Appellate Court

 5 Transferred from 6 Multidistrict Litigation

(Specify District)

 7 Appeal to District Judge from Magistrate Judge Judgment 2b. Removed from State Court

AND at least one party is a pro se litigant

(PLACE AN **x** IN ONE BOX ONLY)**BASIS OF JURISDICTION****IF DIVERSITY, INDICATE CITIZENSHIP BELOW.
(28 USC 1332, 1441)** 1 U.S. PLAINTIFF 2 U.S. DEFENDANT 3 FEDERAL QUESTION
(U.S. NOT A PARTY) 4 DIVERSITY**CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)**

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE

PTF 1 DEF 1

CITIZEN OR SUBJECT OF A FOREIGN COUNTRY

PTF 3 DEF 3

INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE

PTF 5 DEF 5CITIZEN OF ANOTHER STATE 2 2INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE 4 4

FOREIGN NATION

PTF 6 DEF 6**PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)**

Anthony Spinale
 266-268 New York City Terminal Market
 Bronx, New York 10474

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

Lindsay Mitchell and Daniel Favale
 c/o United States Department of Agriculture - AMS - F&V - Hunts Point Office
 465 Row C NYC Terminal Market
 Bronx, NY 10474

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: WHITE PLAINS FOLEY SQUARE
 (DO NOT check either box if this a PRISONER PETITION.)

DATE 10/10/2007 SIGNATURE OF ATTORNEY OF RECORD
 RECEIPT # 

ADMITTED TO PRACTICE IN THIS DISTRICT
 [] NO
 [x] YES (DATE ADMITTED Mo. 01 Yr. 2002)
 Attorney Bar Code # 6689

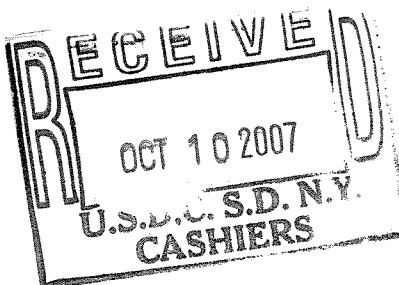
Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge _____ is so Designated.

J Michael McMahon, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

MICHAEL J. GARCIA
 United States Attorney for the
 Southern District of New York
 By: CAROLINA A. FORNOS
 Assistant United States Attorney
 86 Chambers Street
 New York, New York 10007
 Tel. No.: (212) 637-2740
 Fax No.: (212) 637-2702



COPY

JUDGE McMAHON

'07 CIV 8760

ECF

NOTICE OF REMOVAL

07 Civ. _____

from the Supreme Court of the State of
 New York, County of Bronx
 Index No. 20180-07

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

ANTHONY SPINALE,

Plaintiff,

v.

LINDSAY MITCHELL and DANIEL
 FAVALE,

Defendants.

Defendants Lindsay Mitchell and Daniel Favale, Inspectors with the United States Department of Agriculture (“Defendants”), by their attorney, MICHAEL J. GARCIA, United States Attorney for the Southern District of New York, hereby remove the above-captioned action to the United States District Court for the Southern District of New York. The grounds for removal are as follows:

1. On or about August 31, 2007, Plaintiff Anthony Spinale (“Plaintiff”) filed a Summons and Complaint in the Supreme Court of the State of New York, County of Bronx, Index No. 20180-07, against Lindsay Mitchell and Daniel Favale. A true and correct copy of the Summons and Complaint are attached hereto as Exhibit 1.
2. Plaintiff’s Complaint seeks judgment in the amount of \$500,000 for the alleged defamation and denial of inspection services by Defendants.

3. 28 U.S.C. § 1442(a)(1) provides, in pertinent part, that a civil action commenced in State court against the United States or any agency thereof or any officer of the United States or any agency thereof, "may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending." 28 U.S.C. § 1442(a)(1). Because Lindsay Mitchell and Daniel Favale are inspectors with the United States Department of Agriculture, an agency of the United States, this action should be heard by this Court pursuant to 28 U.S.C. § 1442(a)(1).

4. Removal pursuant to 28 U.S.C. § 1442(a)(1) is timely under 28 U.S.C. § 1446(b), as Section 1446(b) authorizes removal of a civil action or proceeding within thirty days of proper service of process in an action. Removal is timely as Plaintiff has not properly served the United States, or the Defendants, in this action.

5. The submission of this notice of removal is solely for the special purpose of removing this action to the appropriate federal court and is not a general appearance by the Defendants. This Office makes a limited appearance on behalf of the Defendants solely for the purpose of removal of this action. This submission does not constitute a waiver of any defense available to the Defendants, including any defense under Rule 12 of the Federal Rules of Civil Procedure.

Dated: New York, New York
October 10, 2007

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney
Southern District of New York

By: 
CAROLINA A. FORNOS
Assistant United States Attorney
86 Chambers Street
New York, New York 10007
Tel.: (212) 637-2740
Fax: (212) 637-2702

TO: Linda Strumpf, Esq.
Lauren E. Moss, of Counsel
Attorneys for Plaintiff
2 West Road
South Salem, NY 10590

EXHIBIT 1

Supreme Court of the State of New York
County of Bronx

-----X

Anthony Spinale

Plaintiff,

-against-

Lindsay Mitchell and Daniel Favale

Defendants

Index No. 80/80-07

Date Filed: 8/31/07

SUMMONS

Defendants' Principal
place of business:
465 NYC Terminal Market
Bronx, NY 10474

The basis of the venue
designated is:
Defendants' Place of Business

-----X
To the above named defendants:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: August 29 2007


LINDA STRUMPF, ESQ.
LAUREN E. MOSS, OF COUNSEL
Attorneys for Plaintiff
2 West Road
South Salem, NY 10590
(212) 566-6800
Our File No. 65140

Defendants' Address:

Lindsay Mitchell and Daniel Favale
C/O USDA - AMS - F&V - Hunts Point Office
465 Row C NYC Terminal Market
Bronx, NY 10474

Supreme Court of the State of New York
County of Bronx

-----X
Anthony Spinale

Index No.

80180-0

Plaintiff,

COMPLAINT

-against-

Lindsay Mitchell and Daniel Favale

Defendants,

-----X

Plaintiff, Anthony Spinale, by his attorneys, Linda Strumpf, and Lauren E. Moss, Of Counsel, accusing the defendants, upon information and belief, alleges the following:

1. That at all times hereinafter mentioned the Plaintiff, Anthony Spinale, was an advisor for Mr. Sprout located in the County of Bronx, City and State of New York; Mr. Spinale has been associated with Mr. Sprout in that location for 17 years.
2. Prior to the utterance of the false and defamatory accusations made by Lindsay Mitchell and Daniel Favale hereinafter set forth, Anthony Spinale has always borne an excellent business reputation.
3. That Plaintiff has received many inspections from numerous inspectors over the past 50 years with only one complaint made regarding a dog.
4. On or about July 31, 2007, Lindsay Mitchell and Daniel Favale maliciously lied to Robert C. Keeney and probably Cathy Hance, alleging "Mr. Spinale

has allowed a dog to roam freely in the area where inspectors are performing their duties which interferes with the inspection services. In addition to the presence of the dog, the type of conduct includes, but is not limited to, Mr. Spinale, his employees or agents making derogatory comments to inspectors, throwing objects at inspectors, constant verbal comments that interfere with the inspector, and requests for inspectors to do actions outside their job duties." The defendants made these verbal statements after conducting an inspection on July 31, 2007 at the platform of Mr. Sprout Inc. located at 400-1-2 Row D. Said inspection was on video surveillance showing the inspection performed from start to finish, which is positive proof that the statements made by defendants are slanderous and outright vicious lies.

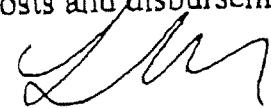
5. Mr. Spinale has no employees and the above statement is false. Employees mentioned above are all employed by Slow Pack, Inc.
6. That the statements made were false and defamatory, were known to the Defendants to be false and defamatory, and were verbally, willfully and maliciously passed on to Mr. Keeney and possibly Cathy Hance with the intent to damage the Plaintiff's good name and reputation which caused monetary losses. These allegations were made because of published announcements by Mr. Spinale regarding the USDA's past and present

corruption.

7. That solely as a result of Defendants' lies, Mr. Sprout Inc., Chain Trucking Corp. and Countrywide Inc. are being denied inspection services, "Inspection services are being withdrawn because your actions at the companies specified in this letter interfere with the inspectors' ability to perform their job duties." This occurred because of the slanderous statements by the Defendants. Said three companies are not related, and plaintiff is not an officer of any of the aforesaid three companies.
8. Mr. Sprout Inc., Chain Trucking Corp. and Countrywide Inc. will suffer irreparable harm and monetary losses without this essential service. Further, without inspections the general public will suffer because they will pay more for the product.
9. That by reason of the intentional false statements by the Defendants, Lindsay Mitchell and Daniel Favale, passed on to Mr. Keeney and probably Cathy Hance without the slightest scintilla of evidence, Plaintiff has been injured and his good name and reputation as a respected businessman has been questioned. He has suffered great pain and mental anguish and substantial monetary losses due to the result of the intentional false verbal statements by Defendants, Lindsay Mitchell and Daniel Favale.

10. Plaintiff suffered damages in the sum of five hundred thousand (\$500,000.00) dollars, as well as monetary losses in a sum yet to be determined.

WHEREFORE, Plaintiff demands judgment against Defendants for the relief requested as set forth above, reinstatement of inspection services plus attorney's fees together with the costs and disbursements of this action.



LINDA STRUMPP, ESQ.
LAUREN E. MOSS, OF COUNSEL
Attorneys for Plaintiff
2 West Road
South Salem, NY 10590
(212) 566-6800
Our File No. 65140

Spinale v. Mitchell
07 Civ. ____
Index No. 20180-07

CERTIFICATE OF SERVICE

I, Carolina A. Fornos, an Assistant United States Attorney for the Southern District of New York, hereby certify that on October 10, 2007, I caused a copy of the foregoing Notice of Removal, to be served upon the following by Federal Express, delivery charges pre-paid:

Linda Strumpf, Esq.
Lauren E. Moss, of Counsel
Attorneys for Plaintiff
2 West Road
South Salem, NY 10590

Dated: New York, New York
October 10, 2007


CAROLINA A. FORNOS
Assistant United States Attorney